



City of Albuquerque

Legislative File Number AC-06-16 (version 1)

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## INTER-OFFICE MEMORANDUM

July 20, 2006

**TO:** Martin Heinrich, President, City Council

**FROM:** Richard Dineen, Planning Director

**AC-06-16** - 06LUCC-00531, Project #1004847 - Mike McKenzie and Ann Carson appeal the Landmarks and Urban Conservation Commission's approval of a Certificate of Appropriateness for new construction at 401 Walter SE, and described as Lot 1, Block 18, Huning's Highland Addition, zoned SU-2, in the Huning Highlands Historic Overlay Zone. (K-14) Petra A Morris, Associate Planner.

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This is an appeal of the Landmarks and Urban Conservation Commission's June 7<sup>th</sup> 2006 decision to approve construction of a duplex on 0.16 acres located at the NW corner of Walter and Lead. The site is zoned SU2-MR per the Huning Highland Sector Plan. The proposed use is permissive and the development meets zoning requirements for setback and height. The Planning Department recommended approval of the request and the Landmarks and Urban Conservation Commission approved this on a vote of 4 to 0.

**STANDING:** The appellants are neighbors to the subject site. Mike McKenzie is the adjacent

property owner at 404/407 Walter SE and Ann Carson resides at 416 Walter SE. Any person aggrieved by a decision of the LUCC has standing for an appeal if filed within 15 days of the decision.

**GROUND FOR APPEAL:** The appellants claim that (a) the LUCC erred in applying adopted city plans, policies and ordinances in arriving at their decision, and (b) the LUCC acted arbitrarily, capriciously and manifestly abusive of discretion. Below is a list of the appellant's arguments (**in bold text**) followed by responses from the City of Albuquerque Planning Department.

**1. The appellant claims that the design is garish, Post Modern and too massive in comparison to the folk Victorian character of the neighborhood. They also claim that the hearing was conducted in an irregular manner.**

The design of the proposed duplex is contemporary, which is permissive under the Design Guidelines for Huring Highland Historic Overlay Zone III (D)(1) "No attempt need be made to recreate a style from the past." Characterization of the style as Post Modern is not supported by The Dictionary of Architecture and Construction, edited by Cyril M. Harris (McGraw-Hill, New York: 1993). The proposed development does include contemporary materials that are discussed later in this memorandum. These materials were determined to be in compliance with the design guideline III(D)(4) which encourages the use of wood, brick, stone and adobe. The appellants offer no specifics or supporting arguments with regard to their claim that the hearing was conducted in an irregular manner.

**2. The appellant claims that LUC Ordinance 14-12-8(B)(1),(2) and (6) were violated because the guidelines in Section III(A) for the Historic Overlay Zone were violated.**

The criteria for issuance of a Certificate of Appropriateness specified in the Ordinance are deemed to be met if analysis of the project demonstrates conformance with the specific design guidelines for the Historic Overlay Zone. The staff report provided a point-by-point response to the specific design guidelines in the staff report and the LUCC has the authority to make a determination about the project's conformance with the guidelines. In some instances, conclusions are by nature subjective; the guidelines contain broad language. The ordinance states that new construction must be compatible. Compatible is a subjective term, however the ordinance defines this in terms of mass, scale, height, setbacks and materials. The LUCC in its decision determined the project to meet the requirements on all these points and to be consistent with the design guidelines for the Historic Overlay Zone.

The architectural value of the area is recognized not by its use as a movie set, as the appellants claim, but by the Historic Overlay Zone. The district has a diverse architectural catalog, containing hundreds of buildings ranging from the very small to very large, built between the late 1880's to the present. The guidelines recognize that new construction is appropriate in certain areas, especially when the site is vacant. The design guidelines, the LUCC Ordinance and national preservation guidelines do not encourage replicas of historic buildings; they encourage a visual timeline so that it is possible to see how the area has changed over time. The LUCC Ordinance clearly states that a contemporary design is acceptable within a historic area. All qualified applications to the City for a Certificate of Appropriateness are entitled to an impartial public hearing based on the merits of the proposal, as reviewed per the Historic Overlay Zone design guidelines.

**The appellant claims that LUC Ordinance 14-12-8C (1)(b) and (3)(b) were violated.**

The applicant presented revised drawings to the Commission at the June 7th hearing, drawings that contained revisions in response to neighborhood concerns. The detached garage, included on the original submittal, was not included on the revised drawings. This was not specifically addressed at the hearing, and will require further clarification from the LUCC. The setbacks were not dimensioned, but the plans are drawn to scale and therefore setbacks were measured. The concrete walls are to be retainers for plants (note on page 1 of plans) and are drawn in (to scale) on page 2 of the plans and measure at 2'. The pre-application checklist is a tool for staff and applicants to organize what types of drawings will adequately represent a specific project in an application. The checklist is not a mandatory requirement that would constitute grounds for reversal. If a submittal is lacking in information, then staff or the Commission requests that information or the application may be deferred. The appellants do not specify any other violation of City Ordinances. The LUCC concluded with their decision that applicable guidelines were satisfied by the proposed development.

**The appellant claims that LUC Ordinance 14-12-9 (B) and (F) were violated.**

The application was originally heard on May 10th and was continued at the applicant's request. A sign was posted on the property and remained in place through the June 7th hearing. The June hearing time was advertised in the legal section of the Albuquerque Journal, and the neighborhood association was notified by City staff via their president by telephone on June 5th of the June 7th LUCC hearing date.

**The appellant claims that LUC Ordinance 14-12-9 (E)(3) was violated.**

This cited section refers to ex-parte communication and not to the submittal of project drawings to City staff or the Commission at a public hearing. It is not relevant to the appeal.

**The appellant claims the LUC Ordinance 14-12-9 (E)(4) was violated.**

The appellants claim failure to swear in witnesses as a basis for reversing and/or remanding a case. A review of the tape recording of the June 7th hearing reveals that three persons who spoke did not swear to tell the truth. There is no rule that mandates striking the testimony from the record. If the challenged witnesses' testimony is cumulative or otherwise does not add to the evidence, or if their testimony did not go to the dispositive issues of the case, then there is no prejudice to the Appellant. Appellant does not show how he was injured or prejudiced by the failure to swear in witnesses. In fact, the witnesses in question supported the appellant's position opposing the development. Appellants allowed the LUCC to go through the entire hearing and said nothing about the failure to swear in. Appellant has a duty to inform the LUCC that the witnesses were not sworn in or he waives his right to raise this as a point of appeal.

**3. The applicant discusses the definition of the word "shall" in the Design Guidelines.**

Shall does express something that is mandatory, however; as discussed previously, the LUCC has

discretion in determining if the guidelines have been satisfied.

**The appellant claims that the project is inconsistent with Design Guidelines III (A)(1), (A)(3), (A)(4), (A)(5) and (A)(6) with regard to height, mass, form, scale and materials.**

The building is not 32' tall as claimed by the appellant. The height of a pitched roof building is measured from the midpoint of the roof. The proposed structure is 25 feet tall; within the 26' maximum allowed under current zoning. The proposed building maintains the setbacks of the street. In this district houses on the corners are often larger and taller than the smaller bungalows in the middle of the blocks. The subject site is on the SW corner of Walter and Lead (401 Walter SE) and proposes a two-story building. The NW corner of the intersection (321 Walter) is a two-story house with a pitched roof; on the SE corner (406 Walter) the property is also two-story and has a pitched roof; the NE corner (324 Walter) is one story with a pitched roof. There is a steep gradient as Lead runs from east to west, 406 Walter therefore starts at a higher point than 401 Walter, which, after grading, will be even lower. The LUCC considered testimony and reviewed evidence in relation to each of these matters as reflected in the minutes of the public hearing, and their conclusion was that the project was appropriate.

*Appellants attach Appendix A.5, and this is new evidence that was not part of the LUCC record or reviewed by the LUCC in its consideration of the application. If the LUHO should agree to consider it staff's response would be that this information addressing scale is cited as from the Bernalillo County Tax Assessor. It appears to present a record of the size of residential buildings but it does not specify the parameters or boundaries of the survey. It does indicate the range in size of "homes" in the district. It is not clear if multi-unit residential buildings are considered in their entirety or as individually owned units, as one would expect the Assessor's Office to records to reflect.*

The appellant takes issue with the use of the term *Queen Anne* when characterizing the architecture of the proposed development. The staff analysis of the project referred to the design as modern, utilizing elements of the Queen Anne style. The Design Guidelines define Queen Anne as “*characterized by a variety of textures and complexity of forms. Various roof shapes and heights on a single house; the use of more than one exterior material (brick and frame or clap-board and shingles); bay windows, towers, and gazebos; front porches with turned wood columns; and carved wood decoration in gable ends, around windows, or on porches are all characteristic of the Queen Anne style and of the district.*” The proposed design includes pitched roofs of varying heights, porches with columns, grouping of vertically oriented windows, and a variety of material and textures, all characteristic elements of the Queen Anne style. The house on the NW corner of Walter and Lead is an example of Queen Anne architecture and is similar to the proposed project in mass and height.

The exterior materials on the proposed structure include *Hardiplank* brick facing, and *Parklex*. *Hardiplank* has previously been approved by the LUCC and used in the Huring Highland Historic District as an alternative to wood lap siding. It is a cementitious product that simulates wood siding. It is cost effective, non-combustible and stands up well to the extremes of the weather. *Parklex* has not been utilized in the district previously. It is not plastic or fake wood, it is a composite pressure treated wood, with a wood finish that is intended to stand up well to the extremes of weather. In response to neighbor's concerns about compatibility of materials the applicant replaced stucco originally proposed in the project

drawings with brick facing. It was this change that precipitated the revised drawings submitted and accepted into evidence at the hearing. The LUCC found the variety of materials and textures to be consistent with the Design Guidelines.

***The applicant provides 3 sketches that are not part of the LUCC record. If the LUHO should decide to accept them as new evidence, staff response is as follows.***

*The drawings provided attached as exhibits to the appeal by the appellants are ambiguous. It is not clear whether the first two drawings are intended to illustrate the height or the square footage of the buildings. A 420 sq. ft. building and a 1,000 sq. ft. building are represented by the same figure. The appellants do not state the source of the square footage and therefore it is not verifiable. The drawings are inconsistent in that the smaller figure shows a pitched roof form, and the proposed development, which is also has varying pitched roof form, is illustrated as flat. This gives the appearance of a greater mass than the proposed structure actually has.*

## CONCLUSION

The LUCC acted within the power and authority as granted them. The LUCC found that the application furthered a preponderance of the City's goals and policies regarding land use and was consistent with the specific design guidelines for the Huning Highland Historic Overlay Zone. The LUCC did not err in applying adopted city plans, policies and ordinances and did not act arbitrarily, capriciously or manifestly abusive of their discretion. The Planning Department supports the LUCC's decision and recommends denial of the subject appeal.

APPROVED:

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Russell Brito, Division Manager  
Development Review Division  
Planning Department

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Notes